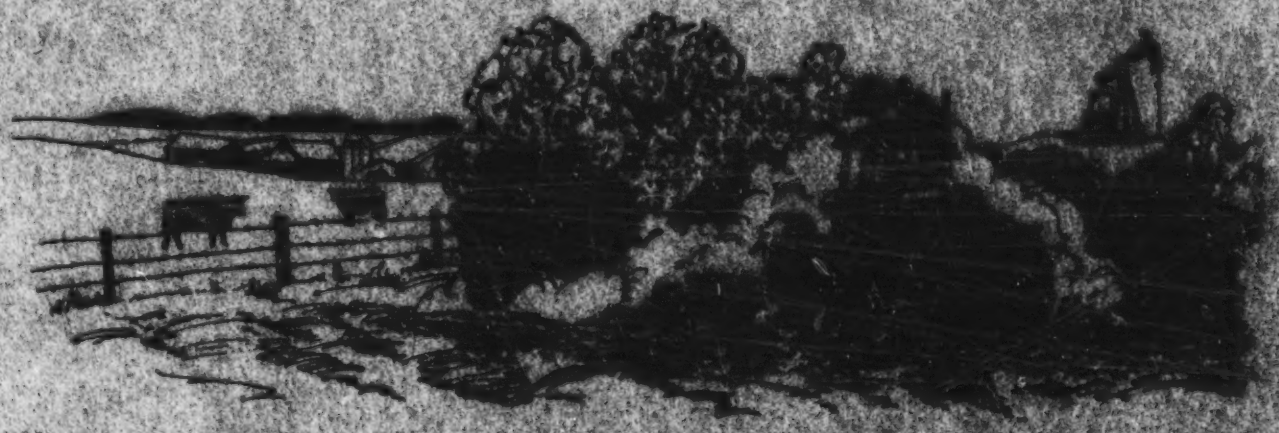
OFFICE OF THE FARMERS' ADVOCATE OF ALBERTA

ANNUAL REPORT 2001



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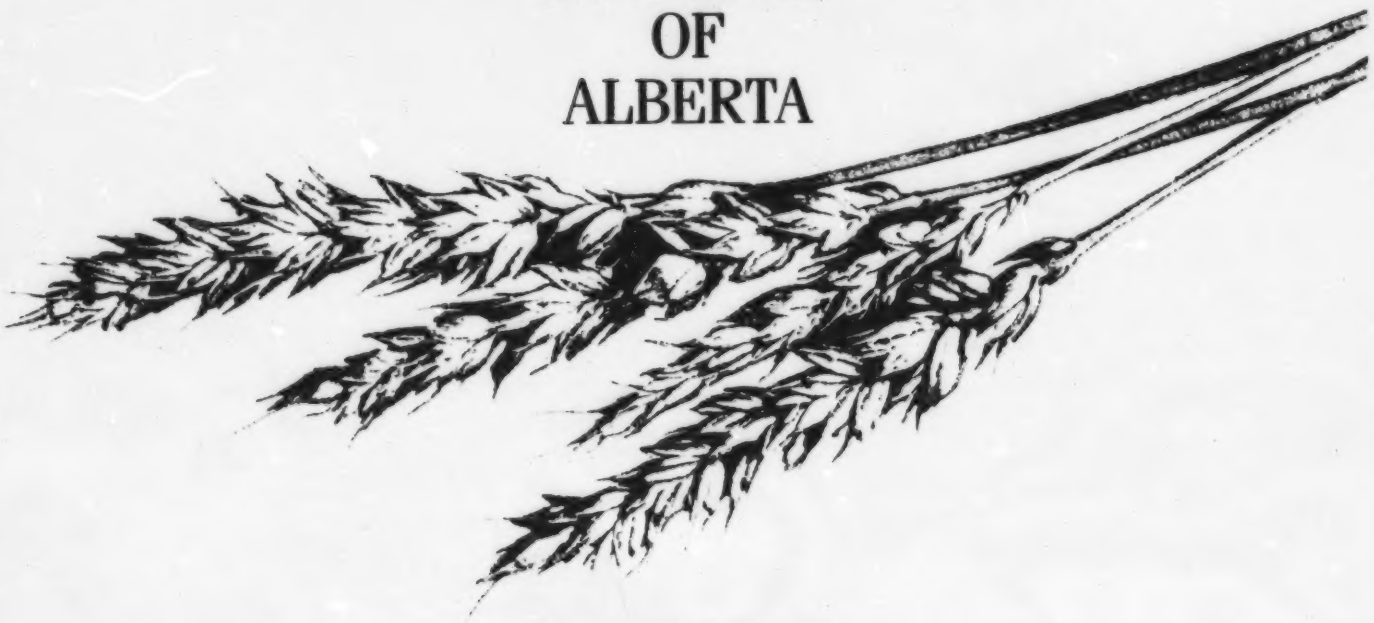
THE FARMERS' ADVOCATE OF ALBERTA



Let the wealthly and great
Roll in splendor and state
I envy them not; I declare it.

I eat my own lamb
My chickens and ham
I shear my own fleece and I wear it.

I have lawns. I have bow'rs
I have fruit. I have flow'rs
The lark is my morning alarmer.

So jolly Boys now
Here's God speed, the Plough
Long Life and Success to the Farmer.

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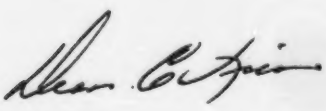
PREFACE

In preparing this annual report we aspire to outline the workings of the Farmers' Advocate Office of Alberta by addressing specific areas in detail and providing synoptic illustrations of the wide variety of cases with which we deal. Both the concerns and the enquiries dealt with by the Farmers' Advocate Office reflect the multitude of issues facing the agricultural community. Agriculture struggles to remain sustainable despite the industrial and urban growth that impacts production in Alberta. Rural Albertans are dealing with significant changes to their lifestyle and their land use. The Farmers' Advocate and his assistants help to provide clarification, support and resolution to the many issues facing our producers.

This report also provides an opportunity for us to express our appreciation through the Minister to other departments and agencies of the government for the assistance they have provided. It is with this support and the co-operation of the private sector that we are able to continue serving rural Albertans.



Dean C. Lien
Farmers' Advocate of Alberta

1 JURISDICTION

The Minister of Agriculture established the Office of the Farmers' Advocate in 1973 to provide an effective mechanism for dealing with the concerns of Alberta farmers. Its primary functions are:

- information dissemination
- problem resolution
- *Farm Implement Act* and *Farm Implement Dealerships Act* administration

The Farmers' Advocate Office (FAO) provides information and advice on a wide range of topics in response to calls received from every corner of the province. Based on the subject matter of the call, the FAO either answers the query or determines where best to obtain the answer. The office speaks to various groups on surface rights, local issues and other topics of interest to rural Albertans. In addition, the FAO produces several publications of interest to surface and mineral owners. They are available through our office either in hard copy or on Ropin' the Web at: **http://www.agric.gov.ab.ca/navigation/agencies/farmersadvocate/index.html**

Dispute resolution often requires the skills of a mediator. The Farmers' Advocate and his assistants facilitate, negotiate or mediate, as required or requested. When a concern involves local governments or agencies, the FAO requests information from the respective organization to advance the investigation. If justified, the FAO encourages the appropriate body to review the circumstances in an attempt to find some resolution. The FAO is pleased with the co-operation and support it has received from local governments.

Although farmers may have a legal remedy, litigation can be an expensive, time consuming and lengthy process. It is outside the jurisdiction of the FAO to become involved in cases where the complainant has retained legal counsel. Further, the FAO will withdraw from any case where legal counsel is subsequently retained. Our focus is to attempt out-of-court mediation with the opposing parties. The FAO prefers to become involved in the early stages of a dispute, when both parties are still willing to find a mutually satisfactory solution.

The FAO has administered the *Farm Implement Act* (FIA) since 1992. The FAO strives to license all farm implement dealers and distributors within the province, ensuring that each licensed company carries adequate bond coverage. The FIA enforces statutory and voluntary warranties in the purchase of new equipment, repairs and replacement parts. Information and mediation are provided to resolve disputes between dealers, distributors, manufacturers and farmers. In 2001, the *Farm Implement Dealerships Act* (FIDA) was enacted. This act provides protection to dealerships from unwarranted termination by a distributor.

2 GENERAL COMMENTS AND ACTIVITIES

In 2001, reduced cash receipts in the farming economy and the continued impact of the energy industry on farm land has meant a steady flow of calls from rural Albertans. To respond to the calls, the Farmers' Advocate has five assistants and one administrative assistant.

Surface rights and landowner/energy sector relations continue to be a primary focus of the office. Strong crude oil and natural gas prices have buoyed energy sector activities. In turn, this has increased the need for landowners to protect their interests. Farmers want to ensure that long-term adverse effect is kept to a minimum, construction damage is limited and any agreements they enter into provide suitable compensation. Most enquiries relate to seismic concerns, surface leasing, pipeline right-of-ways and mineral rights. The focus is on compensation and access by the energy industry onto deeded or leased land for the purpose of exploration, development and production of hydrocarbons. The FAO was also contacted on other matters including:

- chemicals
- farm buildings
- farm equipment repair work orders
- the *Farm Implement Act*
- fences
- financial problems (including bankruptcy)
- flooding and drainage
- gas co-ops and Rural Electrification Associations (R.E.A's)
- groundwater (wells)
- hail, wind and pollution
- highways, roads and railways
- insurance
- irrigation
- leases (farm, grazing and surface)
- livestock (intensified and at-large)
- power lines
- reclamation
- right-of-way (access)
- standing timber
- trespass

Every year there are thousands of business transactions made by farmers with various companies, neighbours and corporations. Under the *Farm Implement Act*, certain obligations are legislated to protect both the seller and purchaser. However, there are many other transactions that are made based on trust alone. Once a handshake was all that was required. Today, businesses come and go, and often their obligations are forgotten.

We have had more bankruptcies than normal this past year including farm machinery, grain and hay dealers. Farmers have been left unpaid for their deliveries of grain and hay to brokers, processors and feedlots. As a result, our office is constantly telling people to be careful about who they deal with. We can advise farmers of procedures that may safeguard the payment for goods.

Amendments to the *Agricultural Operations Practices Act* (AOPA) passed third reading at the fall setting of the Legislature. Its mandate includes licensing, approving and enforcing Confined Feeding Operations (CFO's). Within this

framework, the National Resources Conservation Board (NRCB) has been designated the regulatory authority with the exception of instances where complaints are of a nuisance nature. Under AOPA the FAO provides mediation on nuisance complaints and failing this a Peer Group Review is conducted. In consultation with stakeholder groups, the FAO has selected peer review members. These are "hands on" operators who are knowledgeable about their industry and can provide positive direction to satisfy the complaint.

As an autonomous body the FAO can act in a neutral, unbiased manner. This is evidenced by our involvement with AOPA and also through a new committee under the Sustainable Resource Development Ministry. The Wildfire Cost Assessment Review committee looks at costs to farmers for fire fighting activities carried out by the Forestry Services.

A recent concern expressed by Alberta residents is water shortage and water contamination. As stewards of our most precious resource, it is important that everyone takes a role to ensure the safety of our groundwater. The proper use and disposal of chemicals is vitally important. Effluent from CFOs and livestock at large must be contained to prevent run-off. Any potential for groundwater contamination must be minimized. Water wells damaged by seismic operations need to be brought back into satisfactory condition by special treatment or the drilling of new wells. An application to the Water Well Restoration or Replacement Program (WWRRP) can be made when a well has been damaged though oil or gas related activity.

Change to grazing leases under the *Agricultural Dispositions Statutes Amendment Act* is still under review and will become law when the regulations are approved. Communication with stakeholder groups is ongoing. The goal is to provide an acceptable set of recommendations for all concerned.

The FAO is also the voice of the rural community for numerous projects and working committees. We currently provide input to the:

- Provincial Rural Crime Watch Association
- Land Agents Advisory Committee
- Alberta Pipeline Environmental Steering Committee
- Energy and Utilities Board (EUB) and Environment on reclamation and remediation
- Geophysical Landowner Relations Committee
- EUB- Appropriate Dispute Resolution Program
- Joint Government/Industry Geophysical Steering Committee
- Industry Landowner Relations Committee
- Alberta Trailnet Advisory Committee

In addition to several thousand telephone inquiries, numerous requests for assistance came to the Farmers' Advocate Office in writing. In 2001, Farmers' Advocate staff traveled to every corner of the province to meet with and assist individual landowners or community groups. The one-window approach that the FAO provides to rural Albertans seems to meet the needs of the

rural community. An indication of this is the increased number of inquiries each year.

Rural Alberta faces challenges as the agriculture industry expands and diversifies. The FAO is mandated to provide continued assistance, support and information to farmers and ranchers as they cope with new regulations and impacts of industry on their land and lifestyle.

3 SURFACE RIGHTS

Applications to the Alberta Energy and Utilities Board (AEUB) for well site licenses, pipeline permits and other related energy facilities increased from approximately 28,000 in 2000, to over 29,000 in 2001. The greatest percentage of this activity takes place in rural Alberta, on deeded land or occupied Crown land. This results in numerous enquiries to the Farmers' Advocate Office.

With the demand for energy exploration increasing, the FAO continues to receive numerous enquiries about right-of-way agreements (pipelines), surface leases (well sites), compressor sites, battery sites and other above ground structures. Needless to say, all this activity on agricultural land causes many concerns and questions. A brochure, *Negotiating Surface Rights*, is available from the FAO to help answer questions. It is also available on Ropin' the Web at: **http://www.agric.gov.ab.ca.navigation/agencies/farmersadvocate/index.html**

Geophysical exploration (seismic) is the first step a company takes in its attempt to secure information on the availability of hydrocarbons in a given area. In previous years, the FAO dealt with numerous concerns that landowners had with geophysical operations on their land. Farmers felt there was lack of respect by seismic crews for landowners and their land. The FAO had first hand knowledge of damage complaints and many incidents that could have been avoided with a little care and co-operation. Geophysical industry representatives recognized that improved communication with landowners was necessary to successfully improve their image. The industry took some positive steps by scheduling workshops and seminars for various segments of the industry. The FAO was pleased to participate in some of these events.

Landowner concerns include:

- a lack of respect for the landowner and their land
- no recognition by energy industry that farming is more than a business - it's a way of life
- an attitude that a farmer has lots of land (no understanding of his concern if a company goes off lease or right-of-way)
- poor communication (no sharing of information with landowner)
- improper or incomplete reclamation
- responsibility for contamination
- non compliance with special terms and conditions in agreement
- devaluation of land
- failure to resolve concerns in a timely manner
- contamination or loss of water

The energy industry recognizes that there are areas where it can improve upon in its relationship with landowners. Energy/government/landowner relations committees still have a role to play in keeping industry on track. This is the best way of addressing existing and potential issues that could create challenges for both the agriculture and

energy industries. The Farmers' Advocate Office continues to advance the farmers' perspective at these committee meetings.

In the past year the FAO has been approached by several landowners who are enquiring about the status of leases that are nearing their 50-year anniversary dates. Some of these leases have expired and some have not. It all depends on the wording of the lease agreement. If landowners find themselves with a lease signed in the early 50s, they should seek advice on the status of the lease. The Surface Rights Board has made several decisions with regard to leases that have expired on the 50-year date. These decisions are public information and can be obtained from the Surface Rights Board.

When contacted about entering into a surface lease or a right-of-way agreement, the FAO recommends landowners to consider several factors. Some of these are:

- Don't sign a waiver giving up your 48-hour time period to review the material provided by the company. You need time to make enquiries and consider your options.
- Make sure you are comfortable with the location. If not, you can attempt to negotiate a change in location with the company.
- Read each clause. If you don't understand its intent, ask the land agent to explain it. Clauses can be amended, added or deleted during negotiation with the company. Each change must be initialed by both the landowner and company representative. Once you sign the lease, it's a done deal. You can not change your mind. If the well is a producer, you will have to live with the terms in the lease for the life of the well. Be sure before you sign.
- Negotiate appropriate compensation.

Over the past year, the FAO has seen several new surface rights associations spring up in different areas of the province. The FAO has been asked to speak to numerous groups throughout the province and encourages landowners to participate in local organizations so they can become knowledgeable about energy activity in their area. The information sharing that takes place at this level enables landowners to be prepared when that land agent comes knocking at their door.

4 WATER WELL RESTORATION OR REPLACEMENT PROGRAM (WWRRP)

In 1987, the Water Well Restoration or Replacement Program (WWRRP) was implemented to provide reimbursement to landowners who have replaced or restored water wells that were allegedly damaged by energy activity. The program is funded by the energy industry through levies paid to the Alberta Energy and Utilities Board (AEUB).

A committee, chaired by the Farmers' Advocate Office, reviews applications and interviews landowners/occupants regarding their water well concern. A local Agriculture Development Committee member and a water technician from Alberta Environment form the balance of this committee. A technical review of the affected well is conducted by a Geophysical Inspector and this information is forwarded to the committee. If it is determined by the committee that the applicant's well was damaged by seismic or oil and gas activity, the landowner may be reimbursed for restoring or replacing the water well.

In attempt to reduce conflict, the energy industry has been pro-actively pre and post testing water wells prior to conducting their activities. The FAO handled 25 applications in 2001, one less than the previous year.

5 MINERAL RIGHTS

The strong demand for oil and natural gas has created a high level of exploration activity. Freehold mineral owners, many of whom have never been approached to lease their mineral rights, are now faced with negotiating a mineral lease. To some individuals this is a challenge. To others it is intimidating. Some are exceptionally pleased and sign immediately without making further enquiries. If you are unfamiliar with leasing mineral rights, it is recommended that you contact someone who has knowledge about leasing freehold minerals.

A new petroleum and natural gas lease (CAPL 99) is now available for use. It provides energy companies with three different industry leases to offer mineral owners (CAPL 88, CAPL 91 and CAPL 99). It is important to note that each lease is different and was changed for a specific reason. When using an industry lease, it is in your best interest to negotiate based on the most current agreement (lease).

Mineral owners need to ensure that their interests are protected by addressing some of the following concerns:

- royalty rate
- deductions for processing costs
- lease term
- amount to be paid if well is suspended
- offset clause (include diagonally adjoining lands) (addressed in CAPL 99)
- terms for pooling and unitization
- where more than one company is involved (require one operator be responsible for all payments)
- potential change in use from production of minerals to disposal or storage sites
- bonus consideration
- other terms and conditions

The FAO receives many enquiries from mineral owners about leasing their mineral rights. Some of these enquiries come from outside the province and outside the country. Lease forms and a brochure, *Leasing Mineral Rights*, are available from the FAO.

If you have mineral rights and intend to transfer these rights to your heirs, it is in everyone's best interest to do this prior to a well going into production. Even if you only receive one royalty cheque before the transfer, your heirs will be subject to an assessment by the Canada Customs and Revenue Agency and will have to pay an initial assessment of capital gains in advance. This assessment is determined by the potential production over a number of years. Once the initial payment is paid, the royalties received are taxed accordingly. There are other methods of dealing with this matter, such as establishing a company or trust.

For additional information and advice, mineral owners are strongly encouraged to join the Freehold Owners Association and to retain the services of accountants and lawyers who specialize in the areas of gas and oil mineral rights.

MYTH – *Unless a mineral owner has a will, mineral rights revert to the Crown upon their demise.*

FACT – *If a mineral owner dies intestate (without a will) the Crown makes every possible attempt to find an heir. If after an extensive search no heir is found, the Crown becomes a trustee of the mineral rights.*

FACT – *Mineral rights are considered to be real property, just like land. As such, mineral rights can be given away, sold, traded or willed to heirs.*

MYTH – *If you own mineral rights, you are wealthy.*

FACT – *The value of mineral rights is difficult for an owner to determine until they are put into production. Many wells that are drilled are dry, some wells are minimal producers and others have significant production. Through research, you may be able to make an educated guess as to the value of mineral rights, but only by development will a definitive answer be found.*

6 FARM MACHINERY

The Farmers' Advocate Office provides assistance through negotiation, mediation and arbitration for settling complaints and disputes arising over farm machinery. It also assists in expediting emergency repair parts, helps farmers find sources of parts and machinery (new and obsolete) and licenses the farm implement dealers and distributors operating within the province.

In 2001, licences were issued to 340 dealers (a five per-cent decrease since 2000) and 103 distributors. It is predicted that both these numbers will keep declining over the next few years.

After consultation with the dealers and distributors, it is apparent that bond levels must be raised. Only a few times in the history of *Farm Implement Act* (FIA) has a bond been insufficient to cover claims. However, this situation is changing. Dealer closures have resulted in a number of bond claims this year and several farmers will not receive full compensation for their losses. Satisfactory bond levels will be one of the issues reviewed in the upcoming year.

Two major trends that are of concern to the FAO are the increase in the number of farm implement seizures and/or repossessions and the closure of farm implement dealers through mergers, distributors terminations and receiverships/ bankruptcies. The result is fewer dealers in our province. This trend will continue because there is not enough business to support the current dealer network. The mainline distributors are encouraging dealers to merge with one management group for several branches.

Instances have been reported where equipment has been misrepresented by the year of manufacture by dealers. In a couple of cases the implement proved to be several years older than stated in the sales contract. This lessens the value of the equipment. Again it's buyers beware. You should have someone independently verify the year by running a serial number check before making the deal.

Farm Implement Act

The *Farm Implement Act* provides the farmer with warranty protection, allowable time frames for replacement part availability, requirements for sales contracts and the option of arbitration. As well, the FIA specifies that a new farm implement must be able to perform the work for which it was intended when operated under reasonable conditions. Should a piece of equipment fail to perform within the specified time-frame, the farmer may file a *Notice of Failure to Perform*. The dealer and/or distributor have specific guidelines in which to correct the failure, replace the implement or refund the purchase price. While nothing in the FIA prevents or prohibits a party from seeking legal action, the Farmers' Advocate Office and the FIA provide a cost-free, expedient way to resolve concerns.

Farm Implement Dealerships Act

The *Farm Implement Dealerships Act* (FIDA) was enacted in 2001. This legislation was developed in response to concerns brought forward by the farm equipment industry. In the last few years, we have seen the farm implement industry go through several mergers and acquisitions that resulted in fewer companies controlling most of the distribution. Major distributors were pressuring farm implement dealers to carry only their product. Farmers were concerned about losing many of the rural dealerships, forcing them to travel long distances for service and repair.

This legislation will allow farm implement dealerships more choice in the brands of equipment they carry. This will result in stronger competition, greater selection and a saving for farmers. It also prevents farm implement distributors from terminating dealership agreements without cause.

7 CASE SUMMARIES

RANCHERS AND FENCELINES

Ranching in the great foothills of this province bring about lifestyles of independence and mutual understanding. However, last year a grazing co-op member ran into a full-fledged range war with one of its members and his neighbouring rancher.

Apparently, the parties didn't thoroughly understand the agreement on the maintenance of joint fencelines which resulted in neglect of the fence. This started the fight that was further fuelled when access across lands was denied. The result of this situation was a court action to rectify problems that should never have developed. In the course of discussions, this office offered to mediate a resolution. This was not accepted at the time.

Prior to the court case an unfortunate accident occurred and the rancher died. The estate then became the plaintiff. The executors and family decided to pursue mediation instead of going to court. The Farmers' Advocate Office provided a mediator to bring resolution to the situation. While this was very difficult, an arrangement was made to the satisfaction of both parties.

While mediation may appear difficult, the result is a mutual understanding that usually satisfies both parties to some extent. Mediation has been described as a win-win solution. Litigation creates winners and losers.

HOSTILITY FOR NEIGHBOUR

A farmer contacted the Farmers' Advocate Office (FAO) about the unsatisfactory clean up and reclamation on a pipeline right-of-way. He was advised that Alberta Environment enforces conditions on reclamation. In addition, the complainant noted other issues, including fencing and surveying problems, with a neighbour.

The FAO scheduled a site meeting with the farmer and was witness to his numerous complaints which were:

- unsatisfactory pipeline reclamation
- dissatisfaction with the municipal authority on matters of ditches and road diversions
- discontent with the neighbour's new fence locations
- failure to believe that the surveyor contacted by the neighbour was legitimately licensed

After extensive observation of all the complaints listed, as well as others, the Farmers' Advocate concluded that the complaints were either unfounded or of an unsubstantial nature, deserving no further attention.

Upon being advised of the findings, the farmer was grossly unhappy and personally called the Farmers' Advocate to express his dissatisfaction. It is noteworthy that when an individual holds a great animosity for a neighbour and vengeance rather than a resolution is the order of the day, arguments for fairness and justice go unheeded.

IMPROVISE

A farmer contacted the Farmers' Advocate Office regarding his tractor not developing advertised horse power. Huge four-wheel drive tractors must develop their rated horsepower when they are used to pull air seeders, anhydrous tanks and packer bars in series. But what happens when this doesn't occur?

Most articulated tractors[1] are not equipped with a power take-off shaft (pto), so testing the engine horsepower is difficult. One option is to remove the engine and put it on a test stand at a facility equipped to do dynometer (dyno) testing. This is costly and not time efficient. Farmers are also reluctant to remove the engine because it may create further problems - oil leaks, coolant leaks and changed settings on mechanical controls.

Another option is to direct the power off the transmission to simulate the pto shaft. To do this, the tractor is turned to the right and pinned into position. The output shafts from the transmission to the differentials are removed. An adaptor, to simulate the large 1,000 pto shaft, is mounted on the rear of the transmission. At this point the regular dyno at the dealership is rolled into position and the testing of the tractor can begin. In this way the testing is done with the engine in place by using the correct transmission gear to simulate 1,000 rpm. Any shortcomings in horsepower or any other defects can be detected with the tractor being stationary. Potential for mechanical problems, as a result of testing, is minimized.

Should the instance arise that a new tractor is not developing the advertised horsepower, the manufacturer of the engine must make the engine perform. In all cases to date this has been done.

DAM BEAVERS...OR...BEAVER TAILS, ANYONE?

A farmer has a constant battle with beavers backing up water onto her property. The neighbour has no problem with allowing entry, but each removal means either using a backhoe or a certified blaster, each at a cost of $200 per dam. The farmer is spending up to $1,000 per year to remove this natural carpenter, in order to minimize flooding losses on 40 acres of prime hayland.

In recent years, due to budget restrictions, municipalities and the province have cut programs for beaver control. They will only remove dams that cause water damage to municipal or provincial road infrastructure.

Unfortunately, the Farmers' Advocate Office was unable to secure a resolution on this case. If only we could develop a new market for beaver tail...

[1] Articulated tractors – pivot in the middle using a steering wheel activated hydraulic ram

BIG BAD WEEDS

Upon receipt of a weed notice from their local municipality, landowners inquiring about the notice were told that they had mayweed on their property. These folks had farmed their land for many years and had never seen mayweed. When they inspected their land they found the access road to a surface lease in full bloom.

They contacted the Farmers' Advocate, who initiated discussions with the company. The well site had just been reclaimed and in doing the reclamation work it was obvious that the access road was contaminated with mayweed. Two employees of the company came out to check the reclamation status and verified the weed problem. The company sent out three employees, who picked weeds for one full day. Two more employees came out the second day and worked half a day. The weeds along the road looked as if they had not been touched and they continued to flourish.

The landowners were concerned about the weeds going to seed and because their crop had to be harvested soon, they felt they were running out of time. The landowners were not physically able to pull weeds, nor was it their responsibility. They did not have any available relatives or friends to help them. It took many calls to the company before the situation was taken seriously and more troops were sent out. The company has now taken care of the mayweed infestation.

By virtue of their contract with the landowner, the operator is responsible for weed control and should not have to be pursued. When a company fails to meet its contractual obligation, the FAO is here to help.

WATER WELLS

In the last few years water availability has become an ever increasing concern.

In the spring of 2001, a farmer agreed to allow a seismic program to cross his land. Prior to this activity the operator conducted a water well test. The purpose of this test was to establish a norm. Any change in water quality or quantity following seismic could be compared to this earlier test. A day after shooting the program, the operator was back with a damage release form that the landowner signed. Within a couple of weeks the landowner noted a decline in water volume. Within two months, there was almost no water production. The operator, using the signed release as a defense, refused to assist the landowner to resolve the water problem. The shot-holes nearest to the well were 100 metres beyond the regulated 180 metres distance.

The Water Well Restoration or Replacement Program (WWRRP), funded by industry and administered by the Farmers' Advocate Office, was developed to address just this kind of situation.

The landowner applied to the WWRRP. Following an investigation by Alberta Sustainable Resource personnel, a hearing was held. This hearing determined that, based on probabilities, the seismic activity had a negative impact on the landowner's well. The program reimbursed the landowner for the costs of a new well and the abandonment of the old well.

Considering the volume of seismic programs conducted annually in Alberta, the number of problems reported to the FAO is few. If a problem does arise, most companies work with the landowner to reach some resolution. Alberta Sustainable Resources Geophysical Inspectors do a great job of mediating with landowners and industry to resolve concerns. But, when all else fails, the WWRRP may provide the solution.

DON'T FENCE ME IN!

A landowner "A" phoned the Farmers' Advocate Office when he discovered that his neighbour (landowner "B") was building a new fence that he thought was encroaching on his land. When he approached landowner B about the problem, landowner B simply said no, the new fence was on his land.

We scheduled an onsite meeting with all parties attending. Landowner B was adamant that the new fence was on his land. We suggested that they have a legal survey done to determine the boundary line. Both agreed to share the cost of the survey.

When the survey was completed, it showed that landowner B had in fact built his fence on landowner A's land. It went from 0 to 30 feet over ½ mile. When we could not reach a lease or rental arrangement with the parties, it was agreed that landowner B would rebuild the new fence five feet inside his own property.

Good fences make good neighbours!

ANOTHER INSTANCE WHERE GOOD FENCES MAKE GOOD NEIGHBOURS...

The Farmers' Advocate Office (FAO) was called upon to resolve a fencing problem between two neighbours. The complainant stated that the other party would not maintain his fences to an adequate standard.

In the company of the complainant, the Farmers' Advocate attended the site in question. The FAO had contacted the involved parties the day before to ensure that they would be available. The inspection revealed that the offending neighbour had average 3-wire fences and that the ½-mile in question had been stretched and stapled since contact was made by the FAO office the day earlier.

There was little doubt that the complainant held to a higher standard of fencing than his neighbour. The neighbour's fence was of the type largely encountered at an earlier time. Inquiries with those involved indicated that past instances of livestock escaping had not been extensive.

In discussions with the offending farmer, he acknowledged how pressed for time and short of help he had been. He volunteered to be more diligent in regard to his neighbour's property. This matter was concluded with those on both sides of the fence being satisfied.

POWERLINES AND DEAD CATTLE

In the spring of 2001, a cattle farmer in central Alberta suffered the loss of two cows and eight calves from electrocution when a power line fell on the farmer's fence.

According to the power company, the line broke as a result of a hawk or owl getting into a junction box. This created a power surge which caused the line to whip or jump and ultimately break. On breaking it fell on the farmer's fence lines and killed the ten animals touching or near the fence.

The Farmers' Advocate Office is pursuing the company to get compensation for the farmer. However, there has been no reasonable response to the situation. The company stated it was an "act of God" and it has no responsibility. The view this office has taken is that the power line is not on the farmer's land, but on a road allowance. When the line fell it was outside the company's easement and caused damage off-site. The company further stated, "Well, sue us". This, of course, would be an unreasonable step in the case of a $15,000 claim. It would cost an excessive amount of money to litigate and may not get to court for many years.

Unfortunately, the farmer didn't have insurance to cover his loss. Our office is still pursuing compensation for a loss over which the owner had no responsibility or control.

IS IT CHEAPER?

Over the years, the Farmers' Advocate Office has seen distributors set up to sell "off-shore" tractors through a dealer network. The tractors are brought into Canada/Alberta because they are considerably less expensive than what is in the current marketplace. Most of these distributors have taken the proper steps in meeting the various licensing and registration obligations. Unfortunately, with the recent downfall in the farming economy some of these businesses have not done too well. Some distributors have simply closed their doors. They are either unaware or unconcerned that they may have obligations to both the dealers who sold their products and the farmers who bought them.

Although the business may be closed, all warranty claims must be honoured. Dealers and distributors must make parts available for a period of 10 years for those tractors that fall under the purview of the *Farm Implement Act* (FIA). If warranty claims are not honoured, or if parts are not made available, a claim can be made against the bond posted by the distributor that operated within the province of Alberta. Claims can be made on a continual basis until the dollar amount of the bond has expired.

All these factors should be considered when purchasing a new product line instead of an established line. Is it really cheaper in the end?

LOCATION, LOCATION, LOCATION

A prime piece of remote recreational property comes onto the market for sale. Realizing that it is underpriced and that baby boomers are seeking such hideaways, a big city realtor decides to scoop this property. She negotiates one heck of a good deal for herself and is delirious with glee at the amount of money that she is about to make by flipping this property to the next buyer.

Her first plan of action is to upgrade the municipal road allowance to a higher standard to accommodate more and bigger traffic. After the land transfer is completed, the new owner discovers that the road she drove on to view and purchase the property is not an undeveloped municipal road allowance. It is a roadway that crosses a grazing lease that is currently controlled by a local rancher.

Just a minor inconvenience. In her "bull in a china shop" way, she sets her mind to securing a permanent access to her property and negotiates with the lease-holder in a very aggressive manner. She doesn't make much headway. Time is of the essence and there's money to be made. She pursues the poor fellow to a hospital room, where he is recuperating from surgery. She tries to deal, but he won't. She demands satisfaction and she's shown the door. She snaps. His wife snaps back that the roadway was merely a goodwill access point for the previous owner. She adds that the goodwill has now run it's course and that there is no law in Alberta that guarantees access to the property.

And to this day the realtor is accessing her prime recreational property by helicopter.

BORROW RECLAMATION

During roadway construction it is common practice to acquire construction materials, like clay, from neighbouring lands. It was this situation that led to the following concern.

A landowner agreed to a borrow excavation where clay was removed from a 10-hectare site. The topsoil was stripped and replaced during reclamation. After seeding the site to hay, the landowner thought the matter was concluded. Unfortunately, this was not the case. The following season a reclamation inspector determined the site did not meet reclamation standards. This resulted in the site being disturbed and the landowner losing his hay crop.

The contractor was reluctant to pay the landowner for any additional loss and asked for a general damages release to be signed. Their position was that crop loss was covered under the original earth borrow agreement. On the other hand, the farmer who was not concerned with the quality of reclamation work performed, did believe they should compensate him for his losses.

After several discussions with the departments of Environment and Transportation, a new offer of compensation was presented to the landowner. The site has been reclaimed and our file closed.

Note: Minimum standards for reclamation have been developed. Although a reclamation certificate may not be necessary, these standards must be met. If you have a concern with respect to a borrow pit or any other reclaimed excavation, contact your local department of Environment office and speak to a Reclamation Officer.

HELICOPTERS AND LIVESTOCK

A rancher northeast of Edmonton called the Farmers' Advocate Office (FAO) to report cattle were being frightened and sometimes stampeded by low flying military helicopters. The rancher was getting little response to complaints and, through the local Cattlemen's Association, found out that many cattle herds had been effected similarly. The FAO was able to arrange a meeting with the Commanding Officer at Edmonton Garrison.

Representatives of the Cattlemen's Association visited the military base and discussed the problem with military personnel. It was established that military helicopters training in the area are to stay reasonable distances from residences and livestock facilities. The problem surfaced as to the location of these training sites and how to maintain this understanding for future training exercises. The FAO arranged for a general meeting where military personnel would bring maps forward so that ranchers could pin point their farms and advise pilots of restricted areas. A military helicopter was also brought in for ranchers and other local residents to inspect.

Through the FAO a successful arrangement has been made that satisfies the ranchers and allows low-level training to take place.

LOST IN TRUST

Farmers must change the way they deal with farm equipment dealerships. Unfortunately, the days are gone where farmers can assume that the dealership will be around tomorrow. Recently several dealers and dealer conglomerates have been placed into receivership.

Instead of paying the dealer cash differences or the purchase price of a new piece of equipment at the time of signing the sales agreement, farmers are going to have to place this money "*in trust*" or not pay until the new machinery is delivered. In one case, a farmer traded in two pieces of equipment and financed the balance of the sales agreement. His lending institution paid the cash difference and the dealer sold one of the trade-ins. When the dealership was placed into receivership, not only did the farmer not have his new equipment because it had not been ordered, but he also had to buy back one of his original trades. A legal and financial nightmare for the farmer.

Note: As a farmer, do not put yourself in a position where monies and/or machinery can be lost.

MUNICIPAL WATER SYSTEM CAUSES FARMER PROBLEMS

A farmer contacted the Farmers' Advocate Office (FAO) citing difficulties over the years in dealing with a local municipal body. It seemed that various costs and inconveniences had been experienced by the complainant as a result of a town reservoir adjacent to his property.

A creek flowed through the farmer's land. Just below his property, a weir was constructed in the creek to fill the reservoir during times of high run-off.

The farmer had some legitimate problems because of the weir. These included difficulty for his cows in crossing the creek at high water, grass loss in the creek bed from flooding and noxious weed growth where the grass had drowned out.

The complainant asked the FAO to negotiate on his behalf with the municipal authorities. With this in mind, the Farmers' Advocate met with the administration officer and public works foreman from the town. A further meeting was arranged for the Farmers' Advocate and the farmer to attend a regularly scheduled council meeting. The meeting was cordial and all issues were discussed, including a review of the previous agreements and understandings between the involved parties. Due to the extended drought, some uncertainty exists as to the continuance of this municipal project. Currently, the file remains open and the Farmers' Advocate feels optimistic that most of the issues in the dispute will be resolved to the satisfaction of the farmer.

SPRAYING PROBLEM

Each year we receive numerous calls from residents who feel they have been impacted by the spraying activities of their neighbours. One incident occurred when a custom operator, on contract with a local dealer, sprayed near a farm. There was no warning and the spray drift caused health concerns, killed trees and damaged an alfalfa field.

Upon contacting the dealer and operator, no resolution was forthcoming. This caused a call to the Farmers' Advocate Office. We called the operators and again no quick response. Only after a horticulturist assessed damages and the resident proceeded to small claims court did the operators come forward. The operator quickly visited the farm, offered appropriate settlement and the problem was solved.

It's unfortunate that a business would operate in this manner. Frustration can result in people taking extreme measures to have their damages and concerns addressed.

WHAT'S TOO MUCH NOISE?

The Farmers' Advocate Office was contacted by a farmer (acreage owner) irate over the noise generated on an adjacent farm from excessive skeet shooting. The details provided by the

complainant revealed that the property in question was at least a second generation farm in the area. The owner, who did some game guiding to supplement his income, was in the process of establishing a sporting clay course. This is a derivative of trap and skeet shooting that is designed to more closely emulate hunting field conditions.

The local topography was basically foothill country. Both parties were located in a land depression and advised that at certain times of the day they could hear a normal conversation from one yard site to the other, despite being three-quarters of a mile apart.

The Farmers' Advocate explored the possibility of finding a compromise with the owner of the adjacent property. One option was to operate on only one or two scheduled days per week as a matter of courtesy to the complainant. It soon became evident that the complainant would not consider any kind of compromise and wanted the sporting clay course shut down.

The Farmers' Advocate advised the complainant that the adjacent farmer was of long standing and in legitimate use of his land. If there were to be any changes made due to the special circumstances, the matter would be decided by the local planning authorities. The complainant had already contacted the municipality. Although the municipal district did not have a noise by-law, the possibility exists for the skeet shooting operation to be shut down under a business license infraction. Until then, the echo of gun shots reverberates through the valley.

ROUND ABOUT RIGHT-OF-WAY

A landowner contacted the Farmers' Advocate regarding a right-of-way agreement that was entered into in June with the understanding that the pipeline would be installed after his crop was off in the fall. The area that was selected went right through the farmer's calving area, but he agreed to the location because the company indicated that the pipeline would be installed before winter.

In January of the following year, the pipeline was still not installed. The farmer was in the middle of calving when the company approached him and wanted to install the line immediately. He contacted the Farmers' Advocate about this situation and wanted to know what he should do. The Farmers' Advocate became involved in discussions between both parties and was successful in encouraging the company to negotiate a change of location with the landowner. An alternate route was selected, agreed to and the pipeline was installed.

SHOCKING THE NEIGHBOURS

A landowner contacted the Farmers' Advocate with a complaint that his neighbour had added an electric wire to his barbed wire fence. The fence in question is situated about 50 feet from his

house. He had asked his neighbour to remove the electric wire as he had safety concerns for his grandchildren and children of friends who often played in the yard. The neighbour refused to comply with his request.

When the Farmers' Advocate contacted the neighbour he noted that he had been willing to remove the electric wire along the yard site, but not along the whole half mile. He was told by the landowner that this was not acceptable and that the wire had to be removed from the whole line. The neighbour was not prepared to remove the electric wire as some of his horses had sustained injuries while attempting to go over the fence.

After some discussion and deliberation, the landowner agreed to accept the removal of the electric wire along his yard site only as this was his main concern. As both parties were willing to compromise, an agreement was reached. Without the co-operation and willingness to resolve by both parties, this dispute could have carried on indefinitely and created further problems and bad feelings between neighbours.

FOR PEAT'S SAKE

In 1997, a farmer in cattle country was approached by a company to discuss a seismic program. The farmer had no objection to seismic crossing his land. He did, however, caution that some of the land was peat and that water might be a concern. The company assured him that they knew what they were doing and that the shot holes would not cause any difficulty. For the past five years 120 shot holes have flooded 80 acres of hay land. Each year damages were addressed, but the problem was not resolved. It is apparent to all that this area will continue to flood annually for some time to come.

To the credit of the company and the landowner, an agreement has now been reached for a long-term compensation plan. The landowner will receive set compensation annually. This agreement will be reviewed every five years. Should the farmer sell his property, the agreement is assignable.

The Farmers' Advocate Office provided a sounding board to the parties, but it was their diligent work and reasonable, level-headed approach that resulted in a satisfactory solution. We commend both for their perseverance and hard work.

THAT'S THE SMELL OF MONEY!

A mixed farmer is situated on 160 acres that is immediately across the road from a small community. Everybody knows everybody. The farmer's father had raised cattle on that site for 20 years, but then passed on. Coincidentally, at this time, the local municipality undertook an area review and rezoned the 80 acres closest to the village from agricultural land to urban general. This would normally exclude livestock production. However, the new by-law offered grandfather status to this operation as long as

there was no break in production for more than six months. Two years later, the son moves on to the land and decides to raise a higher margin commodity-hogs. His management style is reactive, deal with the problems as they arise.

The locals have lived here for many, many years. They know and support the farmer and his family. They put up with hoards of flies from the farm. They just cover their food and drinks during barbecues and family visits. They just cancel church services when the flies overpower the congregation. They put up with escapee hogs-at-large in town and rooting in their gardens. The odd time, when the hogs couldn't be fooled into coming home with the offer of chopped feed, the high-pitched shrieking of sows could be heard as they were literally dragged home by tractor and rope. This is an agricultural community and no one challenged the activity.

That is until one of the elderly folks, who lives right across the road, decides to sell his home to a couple fleeing the tax load in British Columbia. The "foreigners" buy during a cold spell and actually look forward to having a calming, agricultural scene in their front picture window. Spring arrives along with newborn lambs, calves and piglets. When the snow melts, the odour starts to build and the annual parade of flies and escapees starts anew.

These new residents are feeling like they've been hoodwinked. They demand that the municipality take action and it does, based on the technicality that there had been a cessation of production of two years, twenty years ago. That incident offended the bylaw and supported the municipality's stop work order. This gives the farmer two weeks to sell the hogs and clean up the yard.

The farmer then contacted the Farmers' Advocate Office to help secure a stay of the stop work order. The FAO and other agricultural specialists are working to help him improve the management of the farm and to help relocate his facilities to reduce the impact on the local residents.

We're hoping he will be invited back to the annual barbecue!